

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

By Referral Order dated February 15, 2006, the Honorable Marilyn Hall Patel referred to me for resolution class plaintiffs' and nonparty Gilardi & Co., LLC's ("Gilardi") objections to the subpoena served by defendants Arteva Specialities, S.a.r.l., et al. (collectively "Arteva") on Gilardi.¹ Since then, the parties tried to resolve this issue and, being unsuccessful, on March 23, 2006, Arteva filed a motion to compel compliance with its subpoena served on

¹ At that time, a motion to compel or quash had not yet been filed.

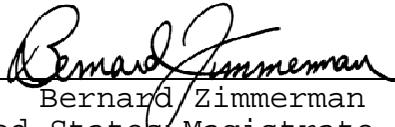
1 Gilardi [docket # 4]. On April 12, 2006, the same day they
2 filed their opposition to Arteva's motion, the class
3 plaintiffs and Gilardi jointly filed a motion to transfer
4 Arteva's motion to compel for resolution to the Honorable
5 Richard L. Voorhees of the Western District of North Carolina
6 [docket # 9]. They then filed an ex parte application to
7 shorten time [docket # 11] so that the court could hear the
8 motion to transfer contemporaneously with the motion to compel
9 since an order in one motion would affect the other. While
10 Arteva did not file an opposition to the motion to transfer,
11 they did file an opposition to the ex parte application to
12 shorten time, stating that they believed the application was
13 "a pure dilatory tactic" (Opp. to Ex Parte App. Page 1, lines
14 25-27) since the class plaintiffs and Gilardi chose this
15 district to litigate this issue by filing objections in this
16 court and "Arteva in fact repeatedly suggested to [class
17 plaintiffs and Gilardi] that the dispute over the Subpoena be
18 resolved in the Western District of North Carolina." (Opp. to
19 Ex Parte App. Page 3, lines 12-14).

20 Having reviewed all the papers filed in these motions, I
21 find that none of the parties contest that Arteva's motion to
22 compel should properly be heard in the Western District of
23 North Carolina. Not only are the underlying actions
24 proceeding in that district, but Judge Voorhees is also
25 deciding the motion for class certification, for which the
26 Arteva defendants are seeking information pursuant to the
27 subpoena served on Gilardi. Being most familiar with the
28 complex and convoluted issues in the underlying action, the

1 Western District of North Carolina is more qualified than this
2 court in adjudicating Arteva's motion to compel compliance
3 with the subpoena and the class plaintiffs' and Gilardi's
4 objections to the subpoena, especially since some of the
5 objections center around relevance to the issues in the
6 underlying actions, privileges attached to the settlement
7 entered by Judge Voorhees and interpretation of Judge
8 Voorhees' September 18, 2003 Order. Any concerns of hardship
9 to Gilardi, a company located in San Rafael, California, by
10 forcing it to pursue this issue in North Carolina, are
11 disposed of by Gilardi's agreement with the transfer of
12 Arteva's motion to compel.

13 I find that there is no need for further briefing or
14 argument. Therefore, **IT IS HEREBY ORDERED** that class
15 plaintiffs' and Gilardi's ex parte application to shorten time
16 [docket # 11] is **GRANTED**, their motion to transfer [docket #
17 9] is also **GRANTED** and Arteva's motion to compel [docket # 4]
18 and the hearing on Arteva's motion to compel scheduled for May
19 3, 2006 are **VACATED**.

20 Dated: April 21, 2006

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22 _____
23 Bernard Zimmerman
24 United States Magistrate Judge

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